

1 **Thomas P. Riley, SBN 194706**  
2 **LAW OFFICES OF THOMAS P. RILEY, P.C.**  
3 **First Library Square**  
4 **1114 Fremont Ave.**  
5 **South Pasadena, CA 91030-3227**

6 **Tel: 626-799-9797**  
7 **Fax: 626-799-9795**  
8 **TPRLAW@att.net**

9 **Attorneys for Plaintiff**  
10 **J & J Sports Productions, Inc.**

11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**

14 **J & J SPORTS PRODUCTIONS, INC.,**

15 **Plaintiff,**

16 **vs.**

17 **JOSEPH MARTIN COYNE and RAFAEL**  
18 **HERNANDEZ, individually and d/b/a**  
19 **DOUBLE PLAY; and 2 X PLAY LLC, an**  
20 **unknown business entity d/b/a DOUBLE**  
21 **PLAY,**

22 **Defendants.**

23 -----  
24 **RAFAEL HERNANDEZ, et al.,**

25 **Third-Party Plaintiffs,**

26 **vs.**

27 **COMCAST CABLE COMMUNICATIONS,**  
28 **INC., LLP, et al.,**

**Third-Party Defendants.**

**Case No.: 3:10-cv-04206-CRB**

**PLAINTIFF'S DECLARATION IN**  
**SUPPORT OF PLAINTIFF'S**  
**SUPPLEMENTAL MEMORANDUM**  
**OF POINTS AND AUTHORITIES IN**  
**SUPPORT OF PLAINTIFF'S**  
**MOTION FOR PARTIAL**  
**SUMMARY JUDGMENT**

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**PLAINTIFF'S DECLARATION IN SUPPORT OF PLAINTIFF'S SUPPLEMENTAL**  
**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S**  
**MOTION FOR PARTIAL SUMMARY JUDGMENT**  
**Charles R. Breyer**  
**CASE NO. 3:10-CV-04206-CRB**





1 rely upon satellite and cable television programming providers (including Comcast) to distribute signal  
2 of the programming we license to our commercial customers. Because the programming we distribute  
3 is encrypted (and made available lawfully only to those that are licensed), in order for our commercial  
4 customers to view the programming they license from us, we must direct programming providers  
5 (including Comcast) servicing their establishment to provide unencrypted signal for the event to their  
6 commercial establishment subscribers. This is what is known as commercial activation requests.

6 6. In conducting our business as licensors, we regularly instruct programming providers  
7 to do commercial activation requests, and we maintain business relationships with various  
8 programming providers for precisely such purposes. In turn, our company is assessed fees for each  
9 commercial activation done by the programming providers, and we in turn pass those fees (known as  
10 a tech fees or activation fees) on through to our customers. For the Court's convenience, I have  
11 attached a copy of the commercial rate card concerning the September 19, 2009 *Program* to this  
12 Declaration which references the Two Hundred Dollar (\$200.00) tech/activation fee our customers  
13 paid (in addition to the applicable commercial license fee required to view the *Program* lawfully).

14 7. Aside from commercial activations however, our company maintains no other  
15 relationship with programming providers (including Comcast). Whereas cable and satellite systems  
16 (including Comcast) provide television programming service to tens of millions of subscribers  
17 throughout the United States, (both residential subscribers and commercial subscribers), our  
18 company does not provide programming to anyone, rather we are a commercial licensor only, which  
19 means we secure licensing rights from the promoter/s of given events we wish to sub-license and  
20 then sell commercial sub-licenses to commercial locations in the hospitality industry throughout the  
21 country.

21 8. I also would like the Court to know that the programming providers do *not* act as a  
22 sales agent for us on any of our events (as the programming our company distributes is licensed  
23 exclusively by my company's internal sales team). The programming providers do *not* market our  
24 programming to their commercial subscribers, as this function is also overseen exclusively by our  
25 company internally. The programming providers are *not* a party to the transaction my company  
26 enters into to secure distribution rights from the promoter. The programming providers (including  
27 Comcast) are *not* joined to the legal claims brought forth by our company against the individuals  
28 and entities which exhibit our programming unlawfully. We do *not* share sales revenue figures (or

any other financial data) with the programming providers. The programming providers are *not* involved with the enforcement campaign we maintain to identify commercial theft of the events we license. In short, we are *not* “partnered” in any way with Comcast (or any other programming providers) now or have we ever been, rather these companies are simply vendors of signal transmission services we utilize to service our commercial customers.

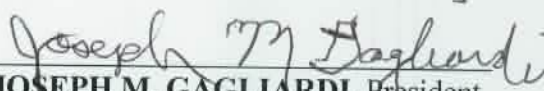
9. Similarly, the programming providers, (including Comcast) do not provide subscriber data to our company. Programming providers (including Comcast) do not share financial data with our company nor do they involve us in anything concerning the piracy enforcement programs they too maintain, nor is my company a party to any of the agreements or contracts they execute with their own subscribers. Much like the fact the programming providers are not a party to the closed-circuit license agreements we enter into with the promoters, my company is similarly not a party, privy, or in privity of contract to the agreements programming providers likewise enter into with promoters to distribute the very same events to their residential subscribers of television programming.

10. Essentially, my company and the programming providers operate in what can be best described as parallel universes and the *only* overlap involves commercial activations we request from them and pay them for. As such, our relationship with the programming providers is limited to a very technical aspect: namely, the delivery of signal to our customers that sublicense the programming we’ve obtained the rights to distribute commercially. Programming providers provide a vital component of the programming transaction essential to our closed-circuit business (much like the companies which print promotional posters, and materials we provide our customers as well), but as set forth above, our business relationship with them is very limited and entirely independent of their own agreements with their subscribers and the promoters themselves.

I declare under penalty of perjury pursuant to the laws of the State of California and the United States that the foregoing is true and correct. Executed this 5th day of August 2011.

Respectfully submitted,

Dated: 8/5/2011

  
JOSEPH M. GAGLIARDI, President  
J & J Sports Productions, Inc.

# **Exhibit 1**





**CALL TO ORDER: 1-888-258-7115**

*RATE CARD*

# **"NUMBER ONE / NUMERO UNO"**

**Saturday, Sept 19, 2009 9:00 PM ET/6:00 PM PT**

From MGM GRAND GARDEN ARENA - Live on Pay-Per-View

**Floyd Mayweather Jr.**

**VS.**

**Juan Manuel Marquez**

Fights are subject to change\*\*\*

**A NON-REFUNDABLE MINIMUM GUARANTEE OF \$1600.00 Plus \$20.00 Per Person Above 100.**

<u>MINIMUM SEATING</u>	<u>RATE</u>
<b>0 – 100</b>	<b>2200.00</b>
<b>101 – 200</b>	<b>2800.00</b>
<b>201 – 300</b>	<b>3200.00</b>
<b>301 – 400</b>	<b>4200.00</b>
<b>401 – 500</b>	<b>6200.00</b>

Casinos minimum guarantee of \$6200.00 Flat Fee.

Minimum room capacity 300 People per casino.

- Directv and Dishnetwork Activation is included
- Commercial Public Viewing and Business Viewing pricing for this event is based on Fire Code Occupancy.

#### Closed Circuit Information

**All commercial locations that have been licensed to carry this event must have a valid license agreement from the OFFICIAL CLOSED-CIRCUIT PROVIDER, G&G Closed Circuit Events Inc. There is NO OTHER LEGAL LICENSOR. Any location that has not been licensed by this provider will be considered a PIRATE and TREATED ACCORDINGLY.**

For further information regarding multiple locations packages contact

Art Gallegos  
G&G Closed Circuit Events LLC.  
Vice President  
1-888-258-7115

**PROOF OF SERVICE (SERVICE BY MAIL)**

I declare that:

I am employed in the County of Los Angeles, California. I am over the age of eighteen years and not a party to the within cause; my business address is First Library Square, 1114 Fremont Avenue, South Pasadena, CA 91030. I am readily familiar with this law firm's practice for collection and processing of correspondence/documents for mail in the ordinary course of business.

On August 5, 2011, I served:

**PLAINTIFF'S DECLARATION IN SUPPORT OF PLAINTIFF'S  
SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

On all parties referenced by enclosing a true copy thereof in a sealed envelope with postage prepaid and following ordinary business practices, said envelope was duly mailed and addressed to:

**Duncan Barr, Esq.  
O'CONNOR, COHN, DILLON & BARR  
1750 Montgomery, Suite 1116  
San Francisco, CA 94111**

**Trevor McCann, Esq.  
LAW OFFICES OF TREVOR BRANDT MCCANN  
2279 Foxhill Drive, Suite 200  
Martinez, CA 94553**

**Jie-Ming Chou, Esq.  
COOPER, WHITE & COOPER, LLP  
201 California Street  
San Francisco, CA 94111**

I declare under the penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct and that this declaration was executed August 5, 2011, at South Pasadena, CA.

Dated: August 5, 2011

/s/ Maria Baird  
MARIA BAIRD